

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE: BOESEN, Peter V.)
SERIAL NO: 09/558,519)
FOR: POINT OF SERVICE BILLING)
AND RECORDS SYSTEM)
FILED: April 26, 2000)
GROUP ART UNIT: 3626)
CONF. NO: 9687)
) APPEAL NO. _____
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BRIEF ON APPEAL

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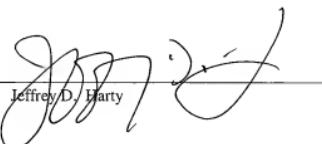

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6. None of the cited prior art alone or in combination teach "receiving a change in ordering of diagnosis codes" or "maintaining a user defined rank ordered relationship between the patient procedure code and the plurality of diagnosis codes based on the patient encounter to thereby provide a detailed record of the patient encounter." as recited in claim 98.	11
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I. INTRODUCTION

This is an appeal of the Final Rejection dated September 17, 2008, rejecting claims 84-89, 92-94, 98-100, 102-103, 105, 108 and 110. Appealed claims 84-89, 92-94, 98-100, 102-103, 105, 108 and 110 are set forth in the attached Claim Appendix.

II. REAL PARTY IN INTEREST

The applicant, Dr. Peter V. Boesen, is the real party in interest in this appeal.

III. RELATED APPEALS AND INTERFERENCES

None.

IV. STATUS OF CLAIMS

Claims 84-89, 92-94, 98-100, 102-103, 105, 108 and 110 are pending. Claims 84-89, 92-94, 98-100, 102-103, 105, 108, and 110 are appealed. Claims 1-83, 90-91, 95-97, 101, 104, 106-107, 109 and 111 have been cancelled.

V. STATUS OF AMENDMENTS

No amendments have been filed since the Final Rejection of September 17, 2008.

The Notice of Appeal was filed on December 17, 2008.

VI. SUMMARY OF CLAIMED SUBJECT MATTER

The invention was made by a medical doctor and for medical doctors or other health care professionals. As such, the claimed invention is directed towards using a user-defined linkage between procedure codes and diagnosis codes to better document a patient encounter. This results in a code-driven method of documenting a patient encounter (original Specification, p. 5, lines 5-7). What is claimed is not merely collecting diagnosis codes and collecting procedure codes. Nor is what is being claimed merely some relationship between diagnosis codes and procedure codes. Rather, what is being claimed is the user-defined linkage between procedure codes and diagnosis codes to better document a patient encounter. The claimed invention places responsibility for patient billing and recordkeeping on the care provider and the point of care (original Specification, p. 7, lines 6-10). By tracking which diagnosis codes are used to support which procedures, and the rank ordering of the diagnosis codes which support each procedure, more information about the patient encounter is documented then merely collecting diagnosis codes and collecting procedure codes.

Consider a record of procedure codes and diagnosis codes associated with a patient encounter. It provides some information about the encounter in terms of the procedures performed and diagnoses made. Such information is sufficient for billing purposes. Yet, merely recording the procedure codes and diagnosis codes does not convey which of the diagnosis codes were the reason that a care provider performed a particular procedure, nor does the mere recording of procedure codes and diagnosis codes provide any insight into which of the diagnosis codes were the most important to the care provider in the decision to

perform a particular procedure. Others may look at such information and attempt to make educated guesses, but there is no record made.

The claimed invention addresses this problem by linking the diagnosis codes to each procedure code and allowing a user to rank order the diagnosis codes for each procedure performed. Doing so provides for better documentation of the patient encounter. None of the cited prior art references document a patient encounter in the same way. None of the cited prior art references recognize the advantages of such a code-driven system.

Independent claim 84 is directed towards a method for providing medical coding. The method includes receiving a selection of a patient procedure code on a first computer, the patient procedure code representing a procedure performed on a patient during a patient encounter (See, e.g., FIG. 14; FIG. 12; Specification, p. 21, lines 10-19). The method further includes receiving a selection of a plurality of diagnosis codes on the first computer, each of the plurality of diagnosis codes representing a diagnosis applicable to the procedure performed during the patient encounter (see, e.g., FIG. 15; FIG. 13; Specification p. 22, lines 1-10). The method further includes linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer (see, e.g., FIG. 12; Specification p. 21, lines 10-19). The method further includes providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes (see, e.g., FIG. 13; Specification p. 22, lines 1-16). The method also includes documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis

codes linked to the selection of the patient procedure code of the procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed (see, e.g., FIG. 13; FIG. 12; Specification p. 21, lines 10-19).

Independent claim 92 is directed towards a method for providing code-driven medical reporting. The method includes receiving a selection of a plurality of diagnosis codes on a first computer, each of the plurality of diagnosis codes representing one diagnosis applicable to a patient procedure code representing a procedure performed on a patient during a patient encounter (see, e.g., FIG. 14; FIG. 12; Specification p. 21, lines 10-19). The method also includes receiving a change in ordering of diagnosis codes within the plurality of diagnosis codes within a user defined rank order list (see, e.g., FIG. 13; Specification p. 22, lines 1-16). The method further includes receiving a selection of the patient procedure code on the first computer the patient procedure code representing the patient procedure performed on the patient during the patient encounter (see, e.g., FIG. 14; FIG. 12; Specification p. 21, lines 10-19). The method also includes linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter (see, e.g., FIG. 13; FIG. 12; Specification p. 21, lines 10-19).

Independent claim 98 is directed towards a method for providing code-driven medical reporting for billing purposes. The method includes receiving a selection of a patient procedure code on a first computer, the patient procedure code representing a patient procedure performed on a patient during a patient encounter (see, e.g., FIG. 14; FIG. 12; Specification p. 21, lines 10-19). The method further includes receiving a selection of a plurality of diagnosis codes on the first computer, each of the plurality of diagnosis codes representing a diagnosis of the patient during the patient encounter (see, e.g., FIG. 15; FIG. 13; Specification p. 22, lines 1-10). The method further includes receiving a change in ordering of diagnosis codes from a user (see, e.g., FIG. 13; Specification p. 22, lines 1-16). The method further includes linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer (see, e.g., FIG. 12; Specification p. 21, lines 10-19). The method further includes documenting the linking of the selection of the patient procedure code and the selection of the plurality of diagnosis codes to provide for maintaining a user defined rank ordered relationship between the patient procedure code and the plurality of diagnosis codes based on the patient encounter to thereby provide a detailed record of the patient encounter (see, e.g., FIG. 13; FIG. 12; Specification p. 21, lines 10-19).

Independent claim 105 is also directed towards a method for providing code-driven medical reporting (see, e.g., Specification p. 5, lines 5-7). The method includes providing a user interface adapted for operation on a first computer and using the user interface to collect at least one procedure code representing a procedure performed on a patient during a patient

encounter (see, e.g., FIG. 14; FIG. 12; Specification p. 21, lines 10-19). The method further includes for each of the at least one procedure code, using the user interface to collect a plurality of diagnosis codes, each of the plurality of diagnosis codes representing a diagnosis of the patient during the patient encounter to thereby establish a user defined link between each of the plurality of procedure codes and the plurality of diagnosis codes (see, e.g., FIG. 12; Specification p. 21, lines 10-19). The method further includes using the user interface to reorder the plurality of diagnosis codes and documenting the patient encounter by storing each of the at least one procedure codes and storing each of the at least one diagnosis codes linked to each of the at least one procedure codes to provide a record of each set of diagnosis codes collected for each procedure code and a rank order of each set of diagnosis codes (see, e.g., FIG. 13; p. 22, lines 1-16).

VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 84, 88-89, 94, 98-100, 102-103 and 110 are unpatentable over U. S. Patent No. 6,393,404 to Waters et al in view of U. S. Patent No. 5,325,293 to Dorne and U. S. Patent No. 5,823,949 to Goltra.
- B. Whether claims 92-93, 105 and 108 are unpatentable over U. S. Patent No. 6,393,404 to Waters et al in view of U. S. Patent No. 5,823,949 to Goltra.

VIII. ARGUMENT

A. Claims 84, 88-89, 94, 98-100, 102-103 and 110 are patentably distinguishable from U. S. Patent No. 6,393,404 to Waters et al in view of U. S. Patent No. 5,325,293 to Dorne and U. S. Patent No. 5,823,949 to Goltra.

1. Waters et al. is largely deficient.

Waters et al. is generally directed towards a system and method for optimizing diagnosis procedures and reimbursement claims using a structured search space (Abstract). Waters et al. builds a search tree of all possible combinations of the simple procedures and the compound procedures in a list of ordered procedures and then searches the search tree for the lowest total of values associated with the medical procedures in the list of ordered procedures so as to determine the lowest reimbursement value combination (col. 12, lines 49-67).

As the Examiner recognizes, Waters et al. does not disclose "linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer" as recited in claim 84 (Office Action mailed November 1, 2007, p. 4) As the Examiner further recognizes, Waters et al. does not disclose "providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes" as recited in claim 84 (Office Action mailed November 1, 2007, p. 5).

As the Examiner further recognizes, Waters et al. also does not disclose "documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis codes linked to the selection of the patient procedure code of the

procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed" as recited in claim 84 (Office Action mailed November 1, 2007, p. 5).

2. Waters et al. teaches away from the claimed invention because Waters et al. selects codes for usage based on optimized billing and not to better document the patient encounter.

In addition to these clear deficiencies of Waters et al., it is further submitted that Waters et al. teaches away from the claimed methodology. Waters et al. selects codes for usage based on optimized billing, and not to reflect accurately and completely that which was encountered in the care of the patient (See e.g. col. 2, line 60 to col. 3, line 8). Thus, a billing record generated by Waters et al. does not provide the same accuracy and completeness of the claimed invention. Waters et al. cites codes for billing purposes but fails to teach how codes can be used to better document the patient encounter. Moreover, Waters et al. optimizes codes for billing which is inconsistent with and teaches away from using and maintaining codes in a manner which links procedure codes with diagnosis codes and maintains a rank ordering of the diagnosis codes associated with each procedure.

3. The Examiner failed to properly consider the scope and content of the prior art, as the Examiner fails to properly consider Dorne.

Given the deficiencies of Waters et al., the Examiner relies upon Dorne, col. 16, lines 9-22 as disclosing "linking the selection of the patient procedure code to the selection of the

plurality of diagnosis codes on the first computer." (Office Action mailed November 1, 2007,

p. 4.) There, Dorne merely discloses the following:

The interactive program preferably also has the capability of keeping track of the ICD-9 diagnostic codes most likely associated with the procedures selected by the user. Specifically, after sorting the final code system variable, the interactive program proceeds to an activity block 372 and recalls from memory all of the likely ICD-9 codes associated with the procedures that the user has selected. The ICD-9 codes are diagnostic codes specified by the International Classification of Diseases (9th revision). The interactive program stores these codes to a ICD-9 system variable.

After generating and ordering the CPT codes associated with the selected procedure, the interactive program takes the user back to the Main Menu (FIG. 3A).

Thus, Dorne merely discloses that certain diagnostic codes are more likely to be associated with certain procedures and provides a means to select diagnostic codes. What is more, is that Dorne is not concerned with maintaining a linkage between each procedure code and particular diagnosis codes. Rather, Dorne merely is concerned with recording all of the diagnosis codes. Thus, Dorne fails to record the same amount of information about the patient encounter as in the claimed invention and Dorne fails to realize the benefit of linking procedure codes with diagnosis codes and maintaining a rank ordering of the diagnosis codes associated with each procedure.

4. The Examiner failed to properly consider the scope and content of the prior art, as the Examiner fails to properly consider Goltra.

It is further observed that the Examiner relies upon Goltra as teaching ordering of diagnosis codes. The Office Action of November 1, 2007, p. 5, cites to col. 2, lines 25-58; col. 3, lines 29-41; col. 4, line 58 to col. 5, line 51; col. 6, lines 6-10 as disclosing "providing

a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes". Goltra simply does not disclose this limitation. It is recognized that Goltra does mention ranking of diagnoses, but it is a very different context and Goltra simply does not disclose "providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes." Thus, Goltra also fails to teach documenting a patient encounter by linking procedure codes with diagnosis codes and maintaining a rank ordering of the diagnosis codes associated with each procedure.

5. None of the cited prior art references teach "documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis codes linked to the selection of the patient procedure code of the procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed."

It is further submitted that claim 84 recites "documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis codes linked to the selection of the patient procedure code of the procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed." None of the cited prior art references alone or in combination disclose this limitation. Moreover, this is a significant difference from the cited prior art because it provides for code-driven documentation of a patient encounter, providing additional

documentation regarding why a health care provider performed a particular procedure, what diagnosis was most important to them in making that decision.

For all these reasons, it is respectfully submitted that this rejection to claim 84 must be reversed. As claims 85-89, 94, and 110 depend from claim 84, these rejections should also be reversed.

6. None of the cited prior art alone or in combination teach "receiving a change in ordering of diagnosis codes" or "maintaining a user defined rank ordered relationship between the patient procedure code and the plurality of diagnosis codes based on the patient encounter to thereby provide a detailed record of the patient encounter" as recited in claim 98.

With respect to independent claim 98, none of the cited prior art references teaches "receiving a change in ordering of diagnosis codes from a user" or "maintaining a user defined rank ordered relationship between the patient procedure code and the plurality of diagnosis codes based on the patient encounter to thereby provide a detailed record of the patient encounter." The claim makes clear that what is being rank ordered are the diagnosis codes associated with the patient procedure code during the patient encounter. None of the cited prior art references alone or in combination teach such a limitation. Therefore, it is respectfully, submitted that this rejection to claim 98 should also be reversed. As claims 99-100 and 102-103 depend from claim 98, it is respectfully submitted that these rejections should also be reversed.

7. Lavin et al. does not remedy the deficiencies of Waters et al., Dorne and Goltra and thus the Examiner should reverse with respect to claims 85-87.

Claims 85-87 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Waters et al. Dorne, Goltra, and further in view of U.S. Patent No. 5,772,585 to Lavin et al. Claims 85-87 depend from claim 84 for which the deficiencies of Waters et al. Dorne, and Goltra have already been discussed. Lavin et al. does not remedy these deficiencies. Therefore this rejection to claims 85-87 should also be reversed.

B. Claims 92-93, 105 and 108 are patentably distinguishable from U. S. Patent No. 6,393,404 to Waters et al in view of U. S. Patent No. 5,823,949 to Goltra.

1. The Examiner fails to properly consider the scope and content of the prior art and must be reversed with respect to claims 92-93 because neither Waters et al. nor Goltra alone or in combination teach "linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter."

Claims 92-93, 105, and 108 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Waters et al. in view of Goltra. Claim 92 recites "linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter." Neither Waters et al. nor Goltra disclose such a limitation. Moreover, this is a significant difference

and ignoring it eviscerates that which makes the claim patentable. Therefore, the Examiner must be reversed.

2. **The Examiner fails to properly consider the scope and content of the prior art and must be reversed with respect to claims 105 and 108 because neither Water et al. nor Goltra alone or in combination teach "linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter".**

As previously discussed, Goltra and Waters are deficient. In particular neither reference discloses "using the user interface to reorder the plurality of diagnosis codes." Goltra discusses an ordering of codes but not reordering diagnosis codes using a user interface. Nor does either reference disclose "documenting the patient encounter by storing each of the at least one procedure codes and storing each of the at least one diagnosis codes linked to each of the at least one procedure codes to provide a record of each set of diagnosis codes collected for each procedure code and a rank order of each set of diagnosis codes." No reference documents a patient encounter in this way. It is recognized that the Examiner cites to Goltra as disclosing this limitation, but Goltra simply does not. Moreover, Goltra is directed towards intelligent prompting to assist in diagnosing, not for documenting a patient encounter using codes. Thus, it is further submitted that the combination of Goltra and Waters is merely improper hindsight. The alleged motivation or suggestion to combine is to "provide a good archival record of what has been done for a particular patient" (Office Action, p. 6). Yet the invention provides for more than merely providing a record of what was done—it provides documentation why each procedure was performed and a rank ordering of the diagnoses which supported the procedure. This provides documentation

beyond what either Goltra or Waters et al. teaches, and insight into why a health care provider performed a particular procedure.

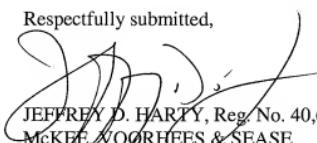
Therefore, it is respectfully submitted that this rejection to claim 105 must be reversed. As claim 108 depends from claim 105, this rejection should also be reversed.

IX. CONCLUSION

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Enclosed herein please find the Appeal Brief and required fee of \$270. If this amount is not correct, please consider this a request to debit or credit Deposit Account No. 26-0084 accordingly.

Respectfully submitted,



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X. APPENDIX - CLAIMS

84. A method for providing medical coding comprising:

receiving a selection of a patient procedure code on a first computer, the patient procedure code representing a procedure performed on a patient during a patient encounter;

receiving a selection of a plurality of diagnosis codes on the first computer, each of the plurality of diagnosis codes representing a diagnosis applicable to the procedure performed during the patient encounter;

linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer;

providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes;

documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis codes linked to the selection of the patient procedure code of the procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed.

85. The method of claim 84 further comprising electronically sending patient data including the patient procedure code and the plurality of diagnosis codes from the first computer to a second computer.

86. The method of claim 85 further comprising displaying the patient procedure code and the linked plurality of diagnosis codes on a display of the first computer prior to the step of electronically sending.

87. The method of claim 85 further comprising generating a patient bill at the second computer, the patient bill associated with the patient data.

88. The method of claim 84 further comprising associating the patient procedure code and the linked plurality of diagnosis codes with patient data including patient identifying information.

89. The method of claim 84 further comprising sending patient data, including patient identifying information to the first computer from a second computer prior to the steps of receiving a selection of a patient procedure code and receiving a selection of the plurality of diagnosis codes.

92. A method for providing code-driven medical reporting, comprising:
receiving a selection of a plurality of diagnosis codes on a first computer, each of the plurality of diagnosis codes representing one diagnosis applicable to a patient procedure code representing a procedure performed on a patient during a patient encounter;
receiving a change in ordering of diagnosis codes within the plurality of diagnosis codes within a user defined rank order list;

receiving a selection of the patient procedure code on the first computer the patient procedure code representing the patient procedure performed on the patient during the patient encounter;

linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter.

93. The method of claim 92 further comprising generating a bill based on the patient procedure code and the plurality of diagnosis codes.

94. The method of claim 84 further comprising generating a patient bill based on the selection of the patient procedure code and the selection of the plurality of diagnosis codes.

98. A method for providing code-driven medical reporting for billing purposes, comprising:

receiving a selection of a patient procedure code on a first computer, the patient procedure code representing a patient procedure performed on a patient during a patient encounter;

receiving a selection of a plurality of diagnosis codes on the first computer, each of the plurality of diagnosis codes representing a diagnosis of the patient during the patient encounter;

receiving a change in ordering of diagnosis codes from a user;
linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer;
documenting the linking of the selection of the patient procedure code and the selection of the plurality of diagnosis codes to provide for maintaining a user defined rank ordered relationship between the patient procedure code and the plurality of diagnosis codes based on the patient encounter to thereby provide a detailed record of the patient encounter.

99. The method of claim 98 wherein each of the plurality of diagnosis codes is an ICD code.

100. The method of claim 98 wherein the patient procedure code is a CPT code.

102. The method of claim 98 wherein a modifier is associated with the patient procedure code.

103. The method of claim 98 wherein a unit value is assigned to the patient procedure code.

105. A method for providing code-driven medical reporting, comprising:
providing a user interface adapted for operation on a first computer;
using the user interface to collect at least one procedure code representing a procedure performed on a patient during a patient encounter;

for each of the at least one procedure code, using the user interface to collect a plurality of diagnosis codes, each of the plurality of diagnosis codes representing a diagnosis of the patient during the patient encounter to thereby establish a user defined link between each of the plurality of procedure codes and the plurality of diagnosis codes; using the user interface to reorder the plurality of diagnosis codes ; documenting the patient encounter by storing each of the at least one procedure codes and storing each of the at least one diagnosis codes linked to each of the at least one procedure codes to provide a record of each set of diagnosis codes collected for each procedure code and a rank order of each set of diagnosis codes.

108. The method of claim 105 wherein the procedure code is a CPT code.

110. The method of claim 84 wherein the patient procedure code is a CPT code.

XI. EVIDENCE APPENDIX

None

XII. RELATED PROCEEDING APPENDIX

None